

EXHIBIT H

Joyce Deposition

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA :

Plaintiff :

v. :

: CIVIL NO. 98-1664 (CCC)

: CIVIL NO. 98-2344 (CCC)

33,92536 ACRES OF LAND, MORE :

OR LESS, SITUATED IN VEGA BAJA, :

COMMONWEALTH OF PUERTO RICO, :

AND JUAN PIZA BLONDET, AND :

UNKNOWN OWNERS :

Defendants :

DEPOSITION OF:

DR. JAMES JOYCE

was taken on April 3, 2006 at the offices of CARLOS
GAZTAMBIDE & ASSOCIATES, Banco Popular Center, Suite
1515, 208 Muñoz Rivera Avenue, Hato Rey, Puerto Rico,
commencing at 9:33 a.m.

BONAFIDE & CERTIFIED REPORTING
P.O. BOX 9022272
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SHEET 16 PAGE 58

1 A No, no, no.
2 Q Now, perhaps this is a little obvious but you
3 aren't aware of any situations where people have been
4 allowed to extract sand from a wetland, have you?
5 A From a wetland itself?
6 Q Yes.
7 A No. I've, what I would say, based on the
8 reading the regulations that they would not be allowed
9 to extract from a wetland area. At least with DNR. If
10 I recall, DNR requires that the Corps of Engineers
11 stipulate the wetland boundaries before, before you can
12 extract.
13 Q Would it be fair to say that, your
14 understanding is that DNR says first find out what the
15 boundaries of the wetlands from the Corps and then
16 that's all off limits?
17 A To get the permits, that's, that's right.
18 Q Did you speak to anyone at DNRA about whether
19 they would ever allow extraction of sand in a Corps'
20 defined wetland?
21 MR. MUNPHREY: I object to the form.
22 THE DEPONENT: No, no, I didn't discuss that
23 directly.
24 EXAMINATION CONTINUED

PAGE 59

1 BY MR. HARRISON:
2 Q Now you discussed using a ten meter buffer
3 and, is that correct?
4 A Yes, yes, it is.
5 Q And in your first version of your report you
6 used a five meter buffer, is that --
7 A That's right.
8 Q Did you speak to anyone at DNRA in the
9 division that issues permits for sand extraction about
10 what their policy was?
11 A Well, I spoke with Darysadel. She's the one
12 who sent me the regulations.
13 Q And is there a particular place in the
14 regulations you can refer to that you found the ten
15 meter number?
16 A I'm not sure. I believe there is or
17 Darysadel may have told me about it directly. Let me,
18 I do believe I refer it in the report.
19 Q Do you have a copy of the regulations with
20 you that she gave you?
21 MR. MUNPHREY: I believe he said it's 80
22 pages.
23 THE DEPONENT: No, that was the 80 pages. I
24 did, however, usually in places like that I have

PAGE 60

1 translated, within my report, sections that pertain to
2 this. I don't refer it to any place in this particular
3 estimate and I believe, I don't know whether I saw it
4 in a, in the, in the actual literature or whether it
5 was something that I was told but it is actually, it's
6 a typical estimate because in my of my other job we
7 left, we had to leave ten, ten meters to adjacent
8 properties. It's a normal restriction, a ten meter
9 buffer zone.
10 EXAMINATION CONTINUED
11 BY MR. HARRISON:
12 Q Were there wetlands involved in your other
13 project?
14 A No, there wasn't.
15 Q Have you been involved in any projects of
16 sand extraction near wetlands?
17 A No.
18 Q And just so I understand fully, you're not
19 sure right now whether you relied on Darysadel's advice
20 for an actual statement in the regulations for your ten
21 meter evaluation?
22 A That's true.
23 Q And what is your understanding of Darysadel's
24 involvement in sand extraction permitting?

PAGE 61

1 A Actually we had a conversation about it
2 previously in another case in that area and she was
3 kind of asking my advice about, you know, what the
4 deposits were like and how much and she was, it was a
5 case of, a little different than this.
6 It was actually some other property that was
7 expropriated for the Tortuguero Reserve. They were
8 claiming that that contained quartz sands and that,
9 therefore, they, they should get reimbursed for those
10 costs.
11 That whole argument is much different because it
12 fell into the reserve area, that was even marked out
13 previous to the taking of the land so we just had a
14 discussion about that and especially in terms of what,
15 what she was really asking about, I remember now, is
16 how I did volume estimates and how I came to volume
17 estimates and she was actually referred to by another
18 appraiser on a different case that I had worked with
19 them.
20 Q I'm going to ask you the same question and
21 try to focus a little bit more. Is it your
22 understanding that she's involved in, in the day to
23 day decisions of whether or not to issue permits for
24 sand extraction?

SHEET 18 PAGE 66

1 BY MR. HARRISON:
2 Q Page 2 of Exhibit 6 --
3 MR. MUNPHREY: Why don't we give it an
4 exhibit number for clarification purposes.
5 MR. HARRISON: Sure.
6 (Whereupon the above-mentioned
7 document was marked as
8 Exhibit No. 6A for identification.)
9 EXAMINATION CONTINUED
10 BY MR. HARRISON:
11 Q You just pointed to Exhibit 6A of the map
12 there and you were putting one of your contour lines is
13 the line between the QS which is blue and the QSS which
14 is pink. Is that correct?
15 A Yes. Roughly. It's, it doesn't follow
16 exactly.
17 Q Now, you also mentioned earlier that you
18 would normally, before getting a permit, you have to
19 get an actual jurisdictional determination from the
20 Corps of Engineers. Is that --
21 A That's what it's in the regulations, yes.
22 Q Okay. Are you aware of whether one has been
23 secured in this situation?
24 A I don't know. In fact, I had asked if

PAGE 67

1 anything had been, if the Corps of Engineers, I asked
2 Mr. Gaztambide if the Corps of Engineers had ever taken
3 jurisdiction and determined the wetland extent and he
4 said he did not know, either he didn't know or he
5 didn't know of anything being, being done like that.
6 Q If you found out that there was one,
7 potentially you might have to alter your volume, based
8 on that report?
9 A Yes, I would have to follow their, their
10 outlines because it would be then ten meters from where
11 they set the limit of the wetland.
12 MR. HARRISON: Let's go off for one second.
13 (Off the record.)
14 EXAMINATION CONTINUED
15 BY MR. HARRISON:
16 Q Let's give you a hypothetical. Are you
17 familiar with the concept of hypotheticals?
18 A Yes.
19 Q Okay. I'm going to give you a copy of this
20 clean map and I'm going to give you a package of 12
21 colored pencils, you can choose your own color and I'm
22 going to give you a compass and what I would like you
23 to do, actually I'm going to give you a scale as well,
24 and what I'm going to ask you to do is, assume for

PAGE 68

1 purposes of this hypothetical, that the buffer that is
2 required is actually 50 meters and then 100 meters,
3 I'm going to give you another copy of the map and
4 I'd like you to, here's the scale --
5 A Fifty meters?
6 Q Yes.
7 A Was the first one?
8 Q Fifty meters.
9 A Five zero?
10 Q Yes, five zero meters. Figure out what the
11 area within the site would be if there were a 50 meter
12 buffer. One of those scales will match up to the --
13 A I believe this one does. Close enough
14 anyway. All right. So what I'm going to do is, I will
15 color on each of the profiles where the 50 meter limit
16 would be.
17 Q Okay.
18 A And I will change the length of the profiles
19 since I calculate that. Two different colors, one for
20 the 50 and one for 100.
21 Q It might actually be easier to do it, let's
22 do, let's do the 50 on one copy --
23 A Okay.
24 Q -- and then do 100 in the other one.

PAGE 69

1 MR. MUNPHREY: Let me make a general
2 objection. I'm not going to interfere with this but
3 the general objection is, it's requiring an expert to
4 make calculations that wasn't submitted to him ahead of
5 time.
6 THE DEPONENT: These essentially would not be
7 out.
8 EXAMINATION CONTINUED
9 BY MR. HARRISON:
10 Q If you can shade in the area that would be
11 out.
12 A Okay. Something like that.
13 Q Are you, you feel relatively comfortable with
14 the calculation you've done there?
15 A For the area available, yes.
16 MR. HARRISON: Okay. Let's go and mark this
17 as the next exhibit. This is Exhibit 8
18 (Whereupon the below-mentioned
19 document was marked as
20 Exhibit No. 8 for identification.)
21 EXAMINATION CONTINUED
22 BY MR. HARRISON:
23 Q And will you just indicate on there like a
24 legend the blue scale equals your calculation of 50